

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs November 27, 2007

STATE OF TENNESSEE v. TOMMY RAY YOUNG

Direct Appeal from the Criminal Court for Campbell County
No. 10351 E. Shayne Sexton, Judge

No. E2006-00570-CCA-R3-CD - Filed February 20, 2008

The defendant, Tommy Ray Young, was convicted by a Campbell County jury of aggravated robbery, a Class B felony, and sentenced by the trial court as a Range III, persistent offender to thirty years in the Department of Correction. After the trial court overruled his motion for new trial, the defendant filed an appeal to this court in which he raised issues of ineffective assistance of trial counsel and the sufficiency of the convicting evidence. The State responded with a motion to dismiss on the basis that both the motion for new trial and the notice of appeal were untimely. By order entered on September 11, 2007, this court granted the motion to dismiss in part, ruling that the only viable issue that remained on appeal was the defendant's challenge to the sufficiency of the evidence. Following our review, we conclude that the evidence was sufficient to sustain the defendant's conviction for aggravated robbery. Accordingly, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

ALAN E. GLENN, J., delivered the opinion of the court, in which NORMA MCGEE OGLE and D. KELLY THOMAS, JR., JJ., joined.

Robert W. Scott, Jacksboro, Tennessee (on appeal), and Timothy P. Webb, LaFollette, Tennessee (at trial), for the appellant, Tommy Ray Young.

Robert E. Cooper, Jr., Attorney General and Reporter; Renee W. Turner, Assistant Attorney General; William Paul Phillips, District Attorney General; and Michael O. Ripley and Todd Longmire, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

FACTS

This case arises out of the November 14, 1999, aggravated robbery of the Eagle Market in Jacksboro. Shortly after 11:00 that night, a masked man armed with a knife entered the store, forced the store clerk, Misty Morgan, to open the cash register, took over \$800 in cash, and fled on foot. Ten to fifteen minutes later, the defendant and his codefendant, Kimberly Mayes, were found together in a vehicle in the parking lot of a nearby church. The sweaty, shirtless defendant was wearing a too-small blue jean jacket. In addition, a sweatshirt and mask were found in the backseat of the vehicle and \$97 in wadded-up cash was found on the floorboard and driver's seat. Consequently, the defendant was arrested and taken to the sheriff's department, where Morgan positively identified him as the robber based, in part, on the appearance of his eyes and a distinctive rip in the rear pocket of his jeans.

The first witness at the defendant's June 29, 2000, trial,¹ was Chief Danny Chapman of the Jacksboro Police Department, who identified various items that were subsequently admitted into evidence in the case, including a Levi jacket, size small; a brown hooded sweatshirt, size extra large; a black face toboggan; a pair of gray jeans with a tear in the right rear pocket; a pair of Nike hiking boots; a lock blade knife in two pieces that was found in the roadway on Kentucky Street; a money bag found in the parking lot of the Eagle Market; a penny roller holder found with the money bag; the store surveillance tape of the robbery; and a map of Jacksboro. At the request of the State, Chief Chapman marked on the map the approximate place on Kentucky Street where the knife had been found, as well as the location of the Eagle Market. He testified that the Eagle Market was located at an intersection "between Eagle Bluff Road and Kentucky Street."

Officer Brian Parker of the Jacksboro Police Department testified that he determined during the course of his investigation of the robbery that the Eagle Market had a working surveillance system and a surveillance tape of the robbery. He identified the surveillance tape, which was then admitted into evidence and later played for the jury.

Misty Morgan testified that she was cleaning the store in preparation for closing when a man wearing blue jeans, tennis shoes, a brown hooded sweatshirt, and a black ski mask entered and backed her behind the counter. The robber, who was armed with a knife, told her that he would not hurt her if she gave him all the money. When she opened the cash register, the man emptied the cash drawer and left the store. Morgan first looked out the door to see if the robber was in a vehicle. Not seeing any vehicle, she returned to the store and called 9-1-1 to report the robbery. She later determined from the nightly report that the robber had taken \$885.65.

Morgan testified that she was taken to the sheriff's department later that night, where she identified the defendant as the man who had robbed the store. She stated that although the robber

¹The defendant was tried alone, as his codefendant failed to appear in court.

had been wearing a mask, she was able to see his mouth and his eyes, which held the look of “the pure devil in him.” Morgan identified, among other items: the store surveillance tape of the incident, which she said she had viewed the night of the robbery; the sweatshirt and mask recovered from the defendant; the store’s money bag, which she said the defendant had used to carry the money from the store; and the knife found on the ground outside the store. She said she recognized the knife by its silver handle and had previously identified it on the night of the robbery where it had been found “on the ground at the red light across from the Eagle Market.” She said she had no doubt that the defendant was the man who had robbed the store, that the sweatshirt and mask were part of the clothing he had worn during the robbery, and that the knife was the weapon with which he had threatened her.

Morgan testified that Kimberly Mayes was an employee of the store at the time of the robbery but was not on duty the night of November 14, 1999. She said she did not know the defendant. On cross-examination, she testified that she noticed that some of the robber’s hair was hanging out of his ski mask but did not notice the color of his eyes, whether he was wearing gloves, or whether his hands were tattooed. She later explained that the knife he pointed at her took her attention from those details about his appearance. She said she noticed that the rip in the pocket of the defendant’s jeans was the same rip that she saw on the robber’s jeans, and on redirect examination she identified the defendant’s jeans as the ones worn by the robber. On recross-examination, she testified that she first noticed the rip in the jeans when viewing the store surveillance tape of the robbery.

Chief Chapman, recalled by the State, identified photographs taken of the defendant the night of his arrest, which show that he had shoulder-length hair and was dressed in jeans with a rip across the right rear pocket. He said that \$97 was recovered from the Ford Mustang, the vehicle in which the defendant was a passenger at the time of his arrest. On cross-examination, he testified that no fingerprints were found on the knife recovered in the case.

Campbell County Sheriff’s Deputy Jailer Justin Wiseman testified that between 11:15 and 11:20 p.m. on November 14, 1999, he was monitoring the jail’s outside security camera when he saw either a man or a large woman dressed in pants and a long-sleeved shirt running from the direction of the Eagle Market toward Main Street. He said that the individual ran beside the building and a fence before disappearing from the camera’s view. On cross-examination, he estimated that the area in which he saw the individual running was approximately 100 feet from the location of the camera, which captured images on a wide-angle lens. Thus, he was unable to distinguish any facial features of the individual.

Sergeant John Finley of the Campbell County Sheriff’s Department testified that he was involved in the robbery investigation on November 14, 1999, and was driving from the Eagle Market toward the jail at 12:14 a.m. when he saw a broken knife lying in the middle of Kentucky Street. He said he immediately contacted Chief Chapman, who came to photograph the knife and take it into evidence. He stated that he came into contact with the defendant that same night after Officer Darrell Mongar radioed to request his assistance at the East Jacksboro Baptist Church. When he arrived at the church, he observed the defendant sitting in the passenger seat of a red Ford Mustang

driven by Kimberly Mayes. The defendant was wearing a blue jean jacket that appeared too small and was shirtless and sweating, which Sergeant Finley found unusual because it was a cold night.

Campbell County Deputy Sheriff Darrell Mongar testified that he and Deputy Jailer Joe Perkins were en route to the sheriff's department on November 14, 1999, when they received a call that a male robbery suspect wearing a ski mask and a burgundy or brown-colored sweatshirt had just left the Eagle Market on foot and was headed in the direction of the jail. In response, he and Officer Perkins began "work[ing] an outer perimeter" around the jail. Spotting a red Ford Mustang with its lights off in the parking lot of the East Jacksboro Baptist Church, he pulled into the lot, blocking the vehicle's exit, and motioned for the driver to stop. When the driver, later identified as Kimberly Mayes, complied, he got out of his vehicle to call in the Mustang's tag number and location. At that point, he noticed a sweatshirt in the backseat of the vehicle and called for backup officers to assist him.

Deputy Mongar testified that the defendant was wearing a blue jean jacket and dark denim pants with a cut across the rear pocket. The jacket was too short in the sleeves and so tight that it could not be buttoned, making it appear as if the defendant had changed clothes. The defendant was sweating slightly, despite the coolness of the night, and his hair, which was pulled back in a ponytail, was "kind of messed up." Deputy Mongar said that he found a ski mask in the pocket of the sweatshirt and wadded up money in the driver's seat, between the front seats, and on the floorboard, appearing as if "somebody just grabbed it and it was wadded up and just throwed [sic] in the vehicle." He said he received the call about the robbery suspect at 11:20 or 11:25 p.m. and pulled into the parking lot of the church approximately ten to fifteen minutes later, at 11:30 or 11:35 p.m.

Deputy Mongar testified that on December 14, 1999, he was assigned to guard the defendant, who was hospitalized at Oak Ridge Hospital following complications from hernia surgery. He said that sometime during that night the defendant initiated a conversation with him about the Bible and God, telling him that he was thankful that God had put him in a cell by himself because it "enabled him to be able to pray and study and read his Bible." During the course of that conversation, the defendant told him that he "wanted to do the right thing" and asked if Deputy Mongar would tell the prosecutor and his defense attorney that he wanted to enter a plea. Deputy Mongar stated that the defendant also told him that law enforcement officers did not have all of their facts straight. Specifically, the defendant said that he had not run all the way from the store to the church but instead had been picked up near the spot where he had thrown the knife down. The defendant speculated that he lost most of the money at the time he discarded the knife but said he "was all messed up on the drugs and . . . didn't remember exactly what he had done with the money."

Deputy Mongar testified that the defendant appeared to be competent during the conversation. On cross-examination, he testified that he did not remember the defendant's being hooked up to a morphine pump.

Chief Danny Chapman, recalled as a witness for the defendant, testified that he did not notice any tattoos on the defendant when he saw him following his arrest.

The defendant acknowledged that he had a number of prior convictions, including several convictions for aggravated burglary, burglary, and theft but adamantly denied that he had robbed the Eagle Market. He testified that the blue jeans, sweatshirt, and black ski mask were not his, but that the blue jean jacket he was wearing at the time of his arrest belonged to him and was not too small at the time he purchased it. He said that he was heavily medicated with painkillers at the time of his hospital conversation with Officer Mongar. He recalled asking Deputy Mongar to read the Bible aloud to him and that they had a discussion about God, but did not recall making any statement about the crime.

ANALYSIS

_____The defendant argues on appeal that the evidence at trial was insufficient to establish his identity as the robber. In support, he points out that Morgan identified him only by his eyes and ripped jeans, that over \$800 was taken in the robbery while only \$97 was found in his vehicle, and that his alleged confession was made while he was in the hospital under the influence of pain medication. The State argues that the evidence was more than sufficient to establish the defendant's identity as the perpetrator of the crime. We agree with the State.

When the sufficiency of the convicting evidence is challenged, the relevant question of the reviewing court is “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789 (1979); *see also* Tenn. R. App. P. 13(e) (“Findings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt.”); State v. Evans, 838 S.W.2d 185, 190-92 (Tenn. 1992); State v. Anderson, 835 S.W.2d 600, 604 (Tenn. Crim. App. 1992). All questions involving the credibility of witnesses, the weight and value to be given the evidence, and all factual issues are resolved by the trier of fact. *See State v. Pappas*, 754 S.W.2d 620, 623 (Tenn. Crim. App. 1987). “A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State.” State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973). Our supreme court stated the rationale for this rule:

This well-settled rule rests on a sound foundation. The trial judge and the jury see the witnesses face to face, hear their testimony and observe their demeanor on the stand. Thus the trial judge and jury are the primary instrumentality of justice to determine the weight and credibility to be given to the testimony of witnesses. In the trial forum alone is there human atmosphere and the totality of the evidence cannot be reproduced with a written record in this Court.

Bolin v. State, 219 Tenn. 4, 11, 405 S.W.2d 768, 771 (1966) (citing Carroll v. State, 212 Tenn. 464, 370 S.W.2d 523 (1963)). A jury conviction removes the presumption of innocence with which a defendant is initially cloaked and replaces it with one of guilt, so that on appeal, a convicted

defendant has the burden of demonstrating that the evidence is insufficient. See State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

We conclude that the evidence was more than sufficient to establish the defendant's identity as the robber. A victim's identification of a defendant as the perpetrator of a crime may be enough, alone, to establish identity. See State v. Hill, 987 S.W.2d 867, 870 (Tenn. Crim. App. 1998); State v. Strickland, 885 S.W.2d 85, 87 (Tenn. Crim. App. 1993). Morgan positively and unequivocally identified the defendant, both on the night of the robbery and at trial, as the masked, sweatshirt-clad man who had robbed the store with a knife. She, additionally, positively identified the sweatshirt and mask found in the Mustang and the jeans in which the defendant was arrested as items of clothing worn by the robber. We note that the jury was also able to view the surveillance tape of the robbery and to compare the appearance of the robber, including his jeans, with photographs taken of the defendant at the time of his arrest.

Morgan testified that the robber left the store on foot. At about that time, a deputy jailer, monitoring the camera system at the jail, observed an individual wearing pants and a long-sleeved shirt running from the direction of the market past the jail. A short time later, the shirtless, sweaty defendant was found with an off-duty employee of the store in a vehicle containing a sweatshirt, ski-mask, and \$97 in wadded-up cash that appeared to have been hastily thrown into the vehicle. Finally, the defendant admitted to a sheriff's deputy that he had robbed the store. This evidence was sufficient for a rational trier of fact to find that the defendant was the perpetrator of the November 14, 1999, aggravated robbery of the Eagle Market.

CONCLUSION

_____Based on our review, we conclude that the evidence was sufficient to sustain the defendant's conviction for aggravated robbery. Accordingly, we affirm the judgment of the trial court.

ALAN E. GLENN, JUDGE